

Text of Proposed Regulations

In the following text, underlining indicates adopted or amended text; and ~~strikethrough~~ indicates deleted text.

3282. Use of Telephones by Inmates.

Subsection 3282(a) through (f) are unchanged.

Subsections 3282(g) and (g)(1) are amended to read:

(g) If staff designated by the institution head determine that an incoming call concerns an emergency or confidential matter, the caller's name and telephone number shall be obtained and the inmate promptly notified of the situation. The inmate shall be permitted to place an emergency or confidential call either collect or by providing for the toll to be deducted from the inmate's trust account. A confidential call shall not be made on an inmate telephone and shall not be monitored or recorded. If a call is determined to be an attorney/inmate confidential phone call, in order for the inmate to place or receive the call it must have already received approval/clearance in accordance with subsections (g)(1), (g)(2) and (g)(4).

Subsection 3282(g)(1) initial sentence is amended and new language is adopted to read:

(1) Confidential calls may be approved on a case-by-case basis by the institution head or designee, ~~only upon written request from~~ upon written request from an inmate's attorney on the attorney's office letterhead stationery. The request shall be made by written request via U. S. Postal Service or facsimile to the Institution Litigation Coordinator or designee. To obtain approval/clearance, the attorney shall provide in writing the following personal and professional information:

(A) Name,

(B) Mailing address,

(C) Date of Birth,

(D) Valid driver's license or state-issued identification card number,

(E) Proof of current registry and good standing with a governing bar association, and

(F) Indication of the jurisdiction(s) licensed to practice law. If the requesting attorney wishes to have a representative conduct the confidential phone call, the attorney representative must provide all applicable information listed above in addition to the attorney submitting their information. Refer to Title 15, subsection 3178(c)(1) for attorney representative criteria.

Existing text from subsection 3282(g)(1) secondary sentences are relocated to new subsection 3282(g)(5).

Existing subsections 3282(g)(2) through (3) are renumbered and relocated to new subsections 3282(g)(6) through (7).

New subsection 3282(g)(2) is adopted to read:

(2) Requesting attorney/attorney representative shall report any prior felony convictions or pending arrest dispositions, describe and explain any prior suspension or exclusion from a correctional facility, and declare under penalty of perjury one or more of the following:

(A) They are the named inmate's attorney either by appointment by the court or at the inmate's request,

(B) They have been requested by a judge to interview a named inmate for purposes of possible appointment as counsel by the same court,

(C) They are requesting to call a named inmate who may be a witness directly relevant to a legal process, purpose, or proceeding.

(D) They are seeking to interview a named inmate, at the request of the inmate, for the purpose of representation of the inmate in a legal process, for a legal purpose or in a legal proceeding, and

(E) They have been requested by a third party to consult with the named inmate when the inmate cannot do so because of a medical condition, disability or other circumstance.

New subsection 3282(g)(3) is adopted to read:

(3) Any false statement or deliberate misrepresentation of facts specific to the information required in subsection (g)(2) shall be grounds for denying the request or cause for subsequent suspension or exclusion from all institutions/facilities administered by the department.

New subsection 3282(g)(4) is adopted to read:

(4) Upon receipt of the information specified in (g)(1), a California law enforcement telecommunications system (CLETS) check of the attorney/attorney representative through the Department of Justice and verification of the attorney's credential through the governing state bar will be conducted. Once the clearance and state bar verification have been obtained and approved the attorney shall be contacted to schedule the confidential telephone call with the specified inmate. Attorneys and attorney representatives shall immediately report to the Institution Litigation Coordinator any change in personal or professional information, arrest history and or pending dispositions and declarations made in subsections (g)(1) and (g)(2) to retain their approval/clearance. In addition, a CLETS check will be conducted at least annually and as needed based on changes provided to the above listed information or information from any source that such changes had occurred.

New subsection 3282(g)(5) is relocated from existing subsection 3282(g)(1) secondary sentences and text is unchanged:

(5) The date, time, duration, and place where the inmate will make or receive the call, and manner of the call are within the discretion of the institution head, except as restricted herein. A confidential call from an inmate shall be placed as a collect call or by providing for the toll to be deducted from the inmate's trust account and made from a

prison telephone or, with appropriate authentication of the caller, may be received from an attorney.

New subsections 3282(g)(6) through (7) are renumbered and relocated from existing subsections 3282(g)(2) through (3) and text is unchanged:

(~~2~~6) It is within the discretion of the institution head, or his/her designee, to approve or deny a confidential call. As long as the attorney/client communication privilege is not violated, a confidential call may be denied where the institution head, or his/her designee, determines that normal legal mail or attorney visits were appropriate means of communication and were not reasonably utilized by the inmate or attorney. Where demand for confidential calls seriously burdens institutional operations, the institution head, or his/her designee, shall prioritize confidential calls.

(~~3~~7) Emergency calls on prison telephones between an inmate and clergy, other religious advisors, or health care professionals shall be approved or denied on a case-by-case basis by staff designated by the institution head.

New subsection 3282(g)(8) is adopted to read:

(8) Inmates, approved attorneys/attorney representatives and pending approval confidential phone call applicants may appeal any departmental policies, staff decisions and institution/facility procedures related to confidential phone calls by following the appeals process as contained in Title 15, Section 3179, Appeals Related to Visiting. Title 15, Section 3179 applies in its entirety.

Subsections 3282(h) through (i) are unchanged.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.